Consultation on employer debt laws.

The Government is proposing changes to the laws on employer debts which arise under s75 Pensions Act 1995. The changes are likely to come into effect in December 2007 and will not be retrospective. Proposals for change include:

- Possibly providing that a s75 debt is triggered when all employers in a multi-employer scheme cease to employ active members at the same time, but this proposal is still subject to consultation;
- Where an employer withdraws from a multi-employer scheme because it ceases to employ active members, no debt will be triggered if that employer takes on at least one other active member within the following 12 months;
- A more regulated approach to arrangements by schemes to apportion an employer's share of the deficit (trustees will have to satisfy themselves that certain tests are met);
- Introducing new ways of calculating a withdrawing employer's share of the deficit under an Approved Withdrawal Arrangement (AWA) – one of which can be an amount agreed between the employer and trustees (which the Regulator must then approve); and
- Enabling schemes to calculate a withdrawing employer's share of the deficit by way of a new mechanism, to be called a Cessation Agreement, which would not require the Pensions Regulator's approval (in contrast to an AWA). If a Cessation Agreement is used then the trustees must satisfy themselves that certain tests are met.

Pensions Act 2007

As well as setting up the Personal Accounts Delivery Authority and paving the way for recently announced extensions to the Financial Assistance Scheme, the Pensions Act 2007:

- Introduces further increases (in tranches) to State Pension Age for people born after 5 April 1959, so that by 2046 the State Pension Age will be 68;
- Will enable trustees (with the employer's agreement) to convert guaranteed minimum pensions to ordinary scheme pension, subject to certain safeguards;

- Abolishes money purchase contracting out for future accrual from an, as yet, unspecified date (earlier Government announcements, however, suggest some time around 2012) and removes restrictions on contracted out rights already accrued, although survivors' benefits will still need to be provided for members who are married or in a civil partnership (this is also a requirement for post-conversion GMP benefits); and
- Enables schemes to replace their two-stage internal dispute resolution procedure with a single-stage arrangement (with all decisions taken by the trustees), should they wish to do so.

Finance Act 2007

Our Summer 2007 Trustees Pension Bulletin outlined the key changes contained in the Finance Bill 2007. Those changes have now been enacted.

Companies Act 2006: indemnities for directors

Indemnities given on or after 29 October 2004 by a company in respect of the directors of another company in the group are already the subject of restrictions contained in the Companies Act 1985. From 1 October 2007, the Companies Act 2006 introduces new restrictions which differ, in part, from those which currently apply. Directors of a trustee company should assess whether any indemnity which they enjoy from the scheme's sponsoring employer falls foul of the restrictions. There is some concern that a breach may invalidate the indemnity in its entirety. Where there are any gaps in protection, possible avenues to explore might include amending the indemnity, issuing a new indemnity, insurance paid for by the sponsoring employer and an indemnity out of the pension fund assets (although pensions legislation restricts how pension scheme assets may be used, whether for indemnities or for buying insurance).

Transfer Values

Draft regulations have been put forward as part of a consultation exercise on how transfer values are calculated. The planned implementation date is 6 April 2008. The aim of the draft regulations is to keep transfer values at broadly the same value as if the current actuarial Guidance Note (GN11) had remained in force. This approach is based on what the scheme thinks it would need at the time of the transfer to provide benefits for the transferring member if s/he had stayed in the scheme. The proposal is to use assumptions and values which are consistent with (but distinct from) those used for scheme funding calculations. Whilst trustees will not be required to disclose the assumptions they have chosen for calculating transfer values (there would be no requirement for the employer's agreement), the consultation paper says that to do so would be good practice. Consequential changes will need to be made to the laws on pension sharing (on divorce or when a civil partnership ends)

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September 2007